

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Shawn C. Northrup	)	Case No.: 3:12-CV-01544
)	
Plaintiff,	)	Judge: Jeffrey J. Helmick
)	
v.	)	BRIEF IN REPLY TO
	)	DEFENDANT'S MOTION TO
City of Toledo, et al.	)	AMEND THE ANSWER
)	
.	)	[Daniel T. Ellis (0038555)]
)	
	)	LYDY & MOAN, LTD.
	)	4930 N. Holland-Sylvania Road
	)	Sylvania, OH 43560-2149
	)	Direct Dial: 419-517-7741
	)	Telephone: 419-882-7100
	)	Facsimile: 419-882-7201

Now comes, Shawn C. Northrup, through Counsel, responds to defendants' request to be granted leave to amend their Answer and modifying the scheduling order. The Complaint was filed on June 15, 2012 and defendants were permitted until the deadline of January 30, 2013 to amend their pleadings and permitted it to expire without asserting any affirmative defense of statutory immunity. The cause of the rescheduling of the discovery cutoff was a direct result of the defendants' refusal to respond to discovery that delayed the taking of the depositions. For example, in responding to the Court requested discovery, the defendants have significantly redacted the telephone records and the unredacted telephone records are inconsistent with the witnesses' observations relating to time in which the defendants discussed issues with the yet

unidentified parties on the phone. The act of redacting their records is inconsistent with their Policy Manual:

305.1 Telecommunications

Use of Personal Telephones (CALEA)

- 7.3 Employee shall not use telephones in place of conventional methods of police related communications (e.g., cellular phone calls or text messaging from one unit to another about criminal activity). The department's communication system should be used for these purposes.
- 7.6 Personal phones used to conduct department business may be subject to discovery in criminal or civil matters or may be used in internal investigations. Therefore these communications should be considered public records and employees should have no expectation of privacy.

The officers voluntarily assumed the risk of their telephone conferences being subject to production when they used them during the stop of Mr. Northrup. The defendants redaction of the records is a continued effort to delay the proceedings.

Defendants have continued to delay these proceedings and have not articulated a good-faith basis for the delay in asserting the defense of statutory immunity that overcomes their burden to demonstrate the reason for the undue delay. They state: "this affirmative defense was inadvertently omitted from Defendants' answer." Defendants' conclusory statement that the affirmative defense was "inadvertently omitted" from the answer does not articulate any admissible facts to explain why the defendants never amended their answer prior to January 30, 2013 or their delay in doing so.

Further, it apparently became obvious to the defendants only after plaintiff explained to the Court the basis for the production of the telephone records and video evidence that there was no probable cause for the interrogation or stop of Mr. Northrup. The discovery deadlines were extended because of defendants continued delay in responding to discovery requests, not a

good-faith effort to present their defenses. Consequently, plaintiff request that their motion be denied.

Respectively submitted,

/s/ Daniel T. Ellis
Daniel T. Ellis (0038555)

Lydy & Moan, Ltd.
The Pacesetter Building
4930 Holland-Sylvania Road
Sylvania, OH 43560-2149
Telephone: (419) 882-7100
Facsimile: (419) 882-7201
E-mail: dellis@lydymoan.com

Attorneys for Plaintiff
Shawn Northrup

CERTIFICATE OF SERVICE

This is to certify that the foregoing was filed electronically with the Court on August 09, 2013. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

By: /s/ Daniel T. Ellis
Daniel T. Ellis (0038555)

LYDY & MOAN, Ltd.
4930 N. Holland-Sylvania Rd.
Sylvania, OH 43560
Telephone: (419) 882-7100
Facsimile: (419) 882-7201
Email: dellis@lydymoan.com